

December 13, 2010

Chairman Julius Genachowski
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

In Re: Preserving the Open Internet, FCC Docket No. 09-191

Dear Chairman Genachowski,

The Center for Individual Freedom submits this letter regarding the almost 2,000 pages of material filed by the Wireline Competition Bureau late on Friday, December 10, 2010 into the above-listed docket. With a pre-Open Meeting sunshine period about to start on Tuesday, December 14, 2010, there is simply not adequate time for the public to review the material that the FCC itself placed on the official record, and thus the proceeding must be extended.

The timing and presentation of this material by the FCC has put interested parties in an impossible situation, as you are either asking us to analyze and respond to this mountain of material within a very short time window, or asking us to forfeit our right to comment on the material the Commission has entered into the record.

It is simply not possible with the time left for any person or group to analyze this new material – close to 2,000 pages from scores of different documents, ranging from white papers, journal articles and even pages Xeroxed from published books, with myriad graphs, facts and citations. This is a task made worse by the fact that the material is not even organized or indexed. Rather, it is simply pasted together at whim into 10 PDF documents.

At the outset of this Open Internet proceeding, Chairman Genachowski, you promised in a speech at Brookings: *“I will ensure that the rulemaking process will be fair, transparent, fact-based, and data-driven.”* (See: www.openinternet.gov/read-speech.html)

At your Senate confirmation hearing, you similarly promised a more fair and transparent FCC:

MR. GENACHOWSKI: “Well, Senator, the first thing is it requires a commitment throughout the agency to principles of openness, transparency, fairness, fact-based decision-making. And if confirmed, I would want to lead the FCC in that direction. I don't see how it could be otherwise. The issues are just too complex. ... The FCC should be a model for transparency, openness and fairness. There's a lot of work to do, but I'd like to

see the FCC be a model with respect to using communications technologies to communicate openly with the American people, and of all the constituencies that are interested in what the Commission does.” (See: www.gpo.gov/fdsys/pkg/CHRG-111shrg54287/html/CHRG-111shrg54287.htm)

This last-minute data dump is not indicative of the fair, open and transparent FCC that we had been promised.

What is included in the almost 2,000 pages of material? How does this data affect the proceeding, and what new light does it shed on the issue? Clearly the FCC thought it important enough material to scan all of these pages into PDF format and post them to the docket. If they are so important, then why not provide adequate time for public review?

Given the vast amount of data just entered into the record by the FCC, it is essential that the FCC halt its planned vote on the Open Internet proceeding and allow adequate time for public review of the new material. Therefore, the Commission should remove the Open Internet rulemaking from their December 21, 2010 agenda, and open a new 30-day window for comments.

If the Commission does not act, it will be denying the public's right to review and comment on information that the Commission itself deemed important enough to include in the official record.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Mazzella", with a stylized, cursive script.

Jeffrey Mazzella
President
Center for Individual Freedom

cc: Commissioner Meredith Attwell Baker
Commissioner Mignon Clyburn
Commissioner Michael J. Copps
Commissioner Robert M. McDowell